

HOUSE BILL 975  
By Hood

AN ACT to amend Tennessee Code Annotated, Title 67,  
Chapter 4, relative to transfer of real property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding Sections 2 through 11 of this act as a new part.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Sale" has its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(A) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in the county for a valuable consideration.

For purposes of this subsection, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The county legislative body shall adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the legislative body shall consider the following:

(i) Persons shall be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they shall be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions shall be considered separate acquisitions.

(B) The term "sale" shall not include:

(i) A transfer by gift, devise, or inheritance.

(ii) A transfer of any leasehold interest other than of the type mentioned above.

(iii) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(iv) The partition of property by tenants in common by agreement or as the result of a court decree.

(v) The assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement.

(vi) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(vii) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(viii) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(ix) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(x) A conveyance to the Federal Housing Administration or Veterans Administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the Federal Housing Administration or Veterans Administration.

(xi) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this act has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(xii) The sale of any grave or lot in an established cemetery.

(xiii) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(xiv) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or children: PROVIDED, That if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of

the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, within three (3) years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty (60) days of becoming due, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

(2) "Selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor, or to another for the transferor's benefit.

(3) "Total consideration paid or contracted to be paid" includes money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

(A) Total consideration shall not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements.

(B) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price.

SECTION 3. Upon the adoption of a resolution by a two-thirds vote of the legislative body, the legislative body of any county experiencing rapid growth is authorized to impose an excise tax for county purposes upon each sale of real property in the county, at a rate not exceeding one-quarter of one percent (.25%) of the selling price. The resolution imposing such

tax shall contain sufficient information and data demonstrating the need for this tax due to rapid growth patterns necessitating the need for the construction of infrastructure improvements and other expenditures related to such growth and there is insufficient revenue derived from real property and other county taxes to provide such needed infrastructure improvements and other expenditures.

Such tax shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 4. The tax levied under this act shall be the obligation of the seller.

SECTION 5. Payment of the tax imposed under this act is due and payable immediately at the time of sale, and if not paid within one month thereafter shall bear interest from the time of sale until the date of payment as provided in the resolution imposing the tax.

SECTION 6. The tax shall be remitted to the tax collection official named in the resolution imposing the tax in such manner as shall be directed in such resolution.

SECTION 7. The tax herein provided for and any interest or penalties thereon shall be a specific lien upon each piece of real property sold from the time of sale until the tax shall have been paid, which lien may be enforced in the manner prescribed for the collection of county tax liens.

SECTION 8. The tax collection official shall be responsible for the collection of the tax and shall place the proceeds of such tax in accounts as designated in the resolution imposing the tax, or as such resolution may thereafter from time to time be amended, for the purposes stated therein.

SECTION 9. The county legislative body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act, including any reasonable penalties for failure to remit the payments to the tax collection official or to make timely payment of the tax due and payable.

## SECTION 10.

(a) Each occurrence of knowing refusal any person to pay or remit the tax imposed is a separate violation of this act and may result in the imposition of a civil penalty, to be imposed separately for each violation, not to exceed fifty dollars (\$50.00) upon a finding of such knowing refusal by a court of competent jurisdiction. As used in this section, "each occurrence" means each day.

(b) Nothing in this section shall be construed to prevent the tax collection official from pursuing any civil remedy available to the collector by law, including issuing distress warrants and the seizure of assets, to collect any taxes due or delinquent under this act.

## SECTION 11.

(a) The tax collection official in administering and enforcing the provisions of the act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67, Tennessee Code Annotated, or otherwise provided by law for the county clerks.

(b) Upon any claim of illegal assessment and collection, the taxpayer has the remedies provided in Title 67, Tennessee Code Annotated, it being the intent of this act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected shall also apply to the tax levied pursuant to this act. The provisions of Tennessee Code Annotated, Section 67-1-707 shall be applicable to adjustments and refunds of such tax. With respect to the adjustment and settlement with taxpayers, all errors of county taxes collected by the clerk under the authority of this act shall be refunded by the clerk.

(c) Notice of any tax paid under protest shall be given to the tax collection official and the resolution authorizing levy of the tax shall designate a county officer against whom suit may be brought for recovery.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall take effect upon becoming a law, the public welfare requiring it.